

Criminal Law Measures Against Concealed Illicit Financial Interests in the Context of Cryptocurrency Transactions

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Abstract

This article examines the criminal law aspects of combating concealed illicit financial interests in the context of cryptocurrency transactions. The study analyzes the legal nature of cryptocurrencies, their role in facilitating hidden financial crimes, and the challenges faced by law enforcement agencies in detecting such activities. Particular attention is given to gaps in international and national legal frameworks, as well as mechanisms for preventing money laundering and illegal asset transfers through blockchain-based systems. The paper proposes recommendations aimed at strengthening legal regulation and improving international cooperation in combating financial crimes involving cryptocurrencies.

Keywords: Cryptocurrency, illicit financial interests, criminal law, money laundering, blockchain, financial crime, legal regulation, virtual assets, international cooperation.

Introduction

Due to the rapid development of the digital economy and the deep integration of technological innovations into our daily lives, the issue of determining the legal status of cryptocurrencies and virtual assets is becoming increasingly relevant. In particular, the question of defining these assets as objects of crime and their legal regulation has become one of the key topics of discussion worldwide.

New forms of crime - the anonymity and decentralized nature of cryptocurrencies - increase the potential for their use in illegal activities. Notably, the execution of illegal transactions on Dark Web markets, as well as financial operations conducted by various criminal networks using digital assets, are recognized as dangerous trends.

The need to study international experience — different approaches exist worldwide regarding the classification of cryptocurrencies as objects of crime and the development of mechanisms to combat related offenses. Some countries are legalizing digital assets and drafting special laws to regulate them, while others are applying strict restrictive measures to prevent their illegal circulation.

Furthermore, in 2024, the rate of crypto asset theft increased by 21 percent, with an estimated \$2.2 billion worth of crypto assets stolen throughout the year. In Uzbekistan, according to reports from Uzenergoinspektsiya, crypto assets valued at approximately \$6.5 million were recorded as having been illegally obtained without state registration or the appropriate license¹.

The President of the Republic of Uzbekistan, Shavkat Mirziyoyev, has noted that there are several priority tasks for the development of the digital economy in our country. These include: comprehensively developing cooperation with international and foreign organizations in the field of crypto-asset activities and blockchain technologies; attracting highly qualified foreign specialists working in the field of blockchain development to jointly implement projects in the digital economy; and creating the necessary legal framework for the introduction of technologies related to this sector².

Criminal-political trends reflect important changes in the development of modern society. Therefore, profound transformations in the economy and financial system require additional regulation of relations between the state and citizens. Economic reforms also bring about changes in criminal legal policy and ensure its further development.

In these processes, the role of criminal law is fundamental. It consists of ensuring the lawful functioning of new digital financial instruments, strengthening the legal order, creating favorable conditions for profit-making or investment activities, and protecting property relations and property rights from criminal encroachments.

I.I. Kucherov notes that “cryptocurrencies are an element of modern alternative payment systems.” According to Bahman Zohuri, “by its nature, cryptocurrency is an electronic digital currency or electronic cash system that does not depend on or rely on traditional commercial or central banks, or the trust of third parties to verify transactions and create new currency units. In most cases, such transactions do not require regulatory and supervisory state bodies—such as a commercial department or treasury, particularly through a foreign assets control office—around the world³.”

According to D. Perkins, “Cryptocurrencies are intangible and do not actually exist⁴.” According to D. Perkins, “Cryptocurrencies are intangible and do not actually exist. Instead, they are virtual and are stored on the internet in a single electronic wallet, which can only be accessed by the wallet owner who has the corresponding public and private keys⁵.”

Monia Milutinović has defined cryptocurrency as follows: “Cryptocurrency represents a digital asset whose main purpose is to serve as a medium of exchange, and in doing so, it uses cryptography so that all transactions are secured, and everything that arises is controlled by its own system. It can be said that cryptocurrency is a part of digital currencies⁶.”

The analysis of the above-mentioned article of the Criminal Code can be carried out in three parts:

¹ Uzbekistan identifies illegal cryptocurrency mining amounting to \$65 million' (Daryo, 8 July 2024) <https://daryo.uz/en/2024/07/08/uzbekistan-identifies-illegal-cryptocurrency-mining-amounting-to65mn>

² Shavkat Mirziyoyev. Yangi O'zbekiston taraqqiyot strategiyasi. To'ldirilgan ikkinchi nashri. – Toshkent: “O'zbekiston” nashriyoti, 2022. – 176-bet.

³ Zohuri B., Hang T. Nguyen., Moghaddam M., What is the Cryptocurrency? Is it a Threat to Our National Security, Domestically and Globally?. I J T C Physics, 2022; 3(1): 1-14.

⁴ D.Perkins, “Cryptocurrency: The Economics of Money and Selected Policy Issues”, Congressional Research Service, Washington, D.C, 2020.

⁵ S.Jokic, A.Cvetcovic, S.Adamovic, N.Ristic and Spalevic, “Comparative analysis of cryptocurrency wallets vs traditional wallets”, Ekonomika, vol. 65, no 3, pp.65-75, 2019. Available: 10.5937/ekonomika1903065j

⁶ <https://www.cceol.com/search/article-detail?id=695295>

- Engaging in the mining of anonymous crypto-assets – this refers to mining cryptocurrencies whose transactions are difficult to track and identify (e.g., Monero, Zcash). Because such assets are difficult for law enforcement agencies to control, they have a high probability of being used in illegal activities (e.g., money laundering, drug trafficking, terrorist financing). Therefore, the legislation of Uzbekistan prohibits the mining of anonymous crypto-assets, and individuals engaged in such activities may be held administratively or criminally liable.

- Carrying out mining activities in violation of the established procedure – under the legislation of Uzbekistan, cryptocurrency mining may only be conducted by entities that are officially registered and have obtained a license. Conducting mining activities in violation of the established procedure means: failing to obtain the proper permit from state authorities; evading tax payments; illegally using electricity (e.g., through hidden or subsidized tariffs); and failing to comply with other established rules. Such violations create economic risks, as illegal mining can consume large amounts of electricity, causing excessive strain on the power supply system. Therefore, strict measures have been established by law against irregular mining activities.

- The existence of an administrative precondition – this refers to the fact that before a crime is committed, the act was recorded as an administrative offense and the person was subjected to the corresponding administrative penalty⁷.

In the Russian Federation, the main risks in the cryptocurrency network manifest themselves in the legalization (laundering) of criminally obtained proceeds using cryptocurrencies. In the Russian Federation, the assessment of such risks, as well as control over the implementation of legislation on combating the legalization (laundering) of proceeds from crime and the financing of terrorism by legal entities and individuals, is carried out by the Federal Financial Monitoring Service (hereinafter referred to as Rosfinmonitoring)⁸.

Specifically, in October 2021, Australia passed a law introducing a program to combat cryptocurrency crimes. Under this law, Australian law enforcement agencies are granted the authority to seize and freeze digital assets belonging to robbers and other cybercriminals. The effectiveness of the law has not yet been assessed, as freezing a cryptocurrency wallet and its contents requires direct access to it. For this reason, individual programs for storing cryptocurrency deposits have been developed.

Since 2021, the United Kingdom has strengthened state-level regulation of the crypto sector. Entities operating in the cryptocurrency exchange and custody sector must undergo a two-stage complex registration process in accordance with the requirements of the European Union's Fifth Anti-Money Laundering Directive (5AMLD), which has already led to the closure of several major crypto exchanges. At the same time, digital assets are recognized as property, and profits derived from their circulation are subject to taxation. Asset holders must pay capital gains tax, and income from mining and staking is also subject to income tax. Since 2021, all cryptocurrency companies engaged in exchanging cryptocurrencies and other related services have been required to register as Virtual Asset Service Providers (VASPs)⁹.

⁷ O'zbekiston Respublikasining ma'muriy javobgarlik to'g'risidagi kodeksi // Qonunchilik ma'lumotlari milliy bazasi, 01.04.1995-yil, // 18.04.2025 y., 03/25/1059/0357-son <https://lex.uz/docs/-97664>

⁸ Положение о Федеральной службе по финансовому мониторингу, утвержденное Указом Президента Российской Федерации от 13.06.2012 № 808 // СПС КонсультантПлюс.

⁹ Action Plan for anti-money laundering and counter-terrorist finance [Электронный ресурс] // Gov.uk. — April 2016. — URL: <https://www.gov.uk> (дата обращения: 01.11.2021).

Thus, VASP regulators are trying not to block innovations and to adapt them to the country's existing financial system. After the United Kingdom left the European Union in 2020, its regulation of the crypto sector has diverged from general European requirements, becoming stricter and sometimes illogical. Specifically, the Baltic states, as well as Switzerland and Luxembourg, have now emerged as alternatives to the United Kingdom, having taken in the flow of IT start-ups from the UK and are now largely considered major hubs of crypto interest. The development of cryptocurrency regulation in the European Union was marked by the announcement in September 2020 of the draft law "On the Regulation of Crypto-Asset Markets" (MiCA). This document was the first step toward unifying EU cryptocurrency legislation, but it is still at the discussion stage and is receiving comments from regulators of EU member states and representatives of the crypto industry.

Italy has also adopted a draft law on the regulation of cryptocurrencies, in which cryptocurrencies are classified as a means of exchanging goods and services. Although cryptocurrency settlements are not widely used in Italy, this draft law was adopted in order to comply with EU rules against money laundering and terrorist financing¹⁰.

In conclusion, it should be emphasized that the dynamics of scientific and technical progress require the legislator to formulate, at the regulatory level, clear criteria and comprehensive rules for the confiscation of cryptocurrency within criminal proceedings. This will make it possible to achieve the objectives of this legal mechanism and ensure the effective administration of justice in criminal cases related to the illegal circulation of cryptocurrencies.

The analysis of the essence of cryptocurrency and the activities associated with its circulation, as well as the process of developing a criminal legal policy concept in this area, inevitably leads us to intersect with other regulatory branches, including the scope of the legitimate economic market. Therefore, a criminal legal concept can only be fully formed after the boundaries of the lawful circulation of cryptocurrency have been clearly defined.

Based on the above analysis, the following conclusions can be drawn regarding the object of crimes related to the proprietary interest of a public official, who is one of the main subjects of this type of crime:

- the specific object is the relations ensuring the normal functioning of the state mechanism;
- the generic object is the social relations ensuring the order of administration within the state mechanism;
- the immediate main object is the social relations ensuring the prestige and normal functioning of a state body, an organization with state participation, or a citizen self-governance body;
- the additional object is the social relations ensuring the rights and legitimate interests of citizens.

Consequently, legislation may reflect the concept of unlawful proprietary interest. In this regard, we propose the following authorial definition: unlawful proprietary interest is understood as the receipt of material benefits or advantages of a proprietary nature in violation of the established procedure for remuneration disproportionate to the work performed (services rendered) or in

¹⁰ Audizione del Ministro Gualtieri sugli esiti dei Consigli Ecofin del 6 ottobre e del 4 novembre 2020 [Commissioni riunite Finanze e Politiche Ue del Senato] — 19 novembre 2020 [Электронный ресурс]. — URL: https://www.mef.gov.it/ufficio-stampa/articoli/2019_2023_Roberto_Gualtieri/Audizione-del-Ministro-Gualtieri-sugli-esiti-dei-Consigli-Ecofin-del-6-ottobre-e-del-4-novembre-2020-Commissioni-riunite-Finanze-e-Politiche-Ue-del-Senato-19-novembre-2020/ (дата обращения: 06.10.2018).

violation of an established prohibition, where the participants are aware that their actions or inactions are contrary to the law in relation to proprietary interest.

Foydalanilgan adabiyotlar ro‘yxati:

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